



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 13, 2004

Mr. Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2004-5725

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 205216.

The Texas Health and Human Services Commission (the "commission") received a request for all complaints made to the commission concerning three named health care provider companies within the last five years. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address the requestor's assertion, included in the request, that the commission has failed to meet its procedural obligations under the Act. Specifically, the requestor asserts that, on March 17, 2004, her client, one of the three named health care providers, requested the same or similar information that is the subject of this instant request and that the commission failed to either provide the requested information or submit the request to this office for a decision within ten business days, as required by 552.301(b). The commission contends it never received the request. Whether the commission received the e-mail request submitted on March 17 presents a fact issue. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records

Decision No. 552 at 4 (1990). Thus, as you deem that the instant request is the first request for information, we will consider your arguments.<sup>1</sup> *Id.*

Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information made confidential under section 531.1021 of the Government Code. Section 531.1021(g) provides as follows:

All information and materials subpoenaed or compiled by the [OIG] in connection with an investigation are confidential and not subject to disclosure under Chapter 552, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the [OIG] or its employees or agents involved in the investigation conducted by the office, except that this information may be disclosed to the office of the attorney general and law enforcement agencies.

Gov’t Code § 531.1021(g). The commission’s Office of Inspector General (the “OIG”) is responsible for the investigation of fraud and abuse in the Medicaid program and the enforcement of state law relating to the provision of those services. *See* Gov’t Code § 531.1021(a). You state that “[a]ll of the requested information was compiled by the Commission in connection with a pending Medicaid fraud and abuse investigation” and that “[t]his information is maintained by the Commission’s OIG.” Therefore, we conclude that the submitted information is confidential under section 531.1021(g) and must be withheld under section 552.101.<sup>2</sup>

You ask this office to issue a previous determination authorizing the commission to withhold all information for similar requests regarding fraud investigation by the commission. We decline to issue such a previous determination at this time. *See* Open Records Decision No. 673 (2001). Therefore, this letter ruling is limited to the particular records at issue in this request and to the facts as presented to us. This ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

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<sup>1</sup>You state and the submitted documents show that the March 17 e-mail request was incorrectly addressed.

<sup>2</sup>Because we are able to resolve this under section 531.1021, we do not address your other claimed exception.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/seg

Ref: ID# 205216

Enc. Submitted documents

c: Ms. Jerri Lyn Ward  
Garlo Ward, P.C.  
505 East Huntland Drive, Suite 335  
Austin, Texas 78752-3714  
(w/o enclosures)